

Afghan Allies Protection Act of 2009

[Public Law 111–8]

[As Amended Through P.L. 116–283, Enacted January 1, 2021]

【Currency: This publication is a compilation of the text of Public Law 111–8. It was last amended by the public law listed in the As Amended Through note above and below at the bottom of each page of the pdf version and reflects current law through the date of the enactment of the public law listed at <https://www.govinfo.gov/app/collection/comps/>】

【Note: While this publication does not represent an official version of any Federal statute, substantial efforts have been made to ensure the accuracy of its contents. The official version of Federal law is found in the United States Statutes at Large and in the United States Code. The legal effect to be given to the Statutes at Large and the United States Code is established by statute (1 U.S.C. 112, 204).】

AN ACT Making omnibus appropriations for the fiscal year ending September 30, 2009, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the “Omnibus Appropriations Act, 2009”.

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DIVISION F—DEPARTMENTS OF LABOR, HEALTH AND HUMAN SERVICES, AND EDUCATION, AND RELATED AGENCIES APPROPRIATIONS ACT, 2009

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TITLE VI

AFGHAN ALLIES PROTECTION ACT OF 2009

SEC. 601. [8 USC 1101 note] SHORT TITLE.

This Act may be cited as the “Afghan Allies Protection Act of 2009”.

SEC. 602. [8 USC 1101 note] PROTECTION FOR AFGHAN ALLIES.

(a) APPROPRIATE COMMITTEES OF CONGRESS DEFINED.—In this section, the term “appropriate committees of Congress” means—

(1) the Committee on Armed Services, the Committee on Foreign Relations, and the Committee on the Judiciary of the Senate; and

(2) the Committee on Armed Services, the Committee on Foreign Affairs, and the Committee on the Judiciary of the House of Representatives.

(b) SPECIAL IMMIGRANT STATUS FOR CERTAIN AFGHANS.—

(1) IN GENERAL.—Subject to paragraph (3), the Secretary of Homeland Security, or, notwithstanding any other provision of law, the Secretary of State in consultation with the Secretary of Homeland Security, may provide an alien described in subparagraph (A), (B), or (C) of paragraph (2) with the status of a special immigrant under section 101(a)(27) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(27)), if the alien—

(A) or an agent acting on behalf of the alien, submits a petition for classification under section 203(b)(4) of such Act (8 U.S.C. 1153(b)(4));

(B) is otherwise eligible to receive an immigrant visa;

(C) is otherwise admissible to the United States for permanent residence (excluding the grounds for inadmissibility specified in section 212(a)(4) of such Act (8 U.S.C. 1182(a)(4))¹; and

(D) clears a background check and appropriate screening, as determined by the Secretary of Homeland Security.

(2) ALIENS DESCRIBED.—

(A) PRINCIPAL ALIENS.—An alien is described in this subparagraph if the alien—

(i) is a citizen or national of Afghanistan;

(ii) was or is employed in Afghanistan on or after October 7, 2001, for not less than 1 year, or, if submitting a petition after September 30, 2015, for a period of not less than 2 years—

(I) by, or on behalf of, the United States Government; or

(II) by the International Security Assistance Force (or any successor name for such Force) in a capacity that required the alien—

(aa) while traveling off-base with United States military personnel stationed at International Security Assistance Force (or any successor name for such Force), to serve as an interpreter or translator for such United States military personnel; or

(bb) to perform sensitive and trusted activities for United States military personnel stationed at International Security Assistance Force (or any successor name for such Force);

(iii) provided faithful and valuable service to an entity or organization described in clause (ii), which is documented in a positive recommendation or evaluation, subject to subparagraph (D), from the employee's senior supervisor or the person currently occupying that position, or a more senior person, if the employee's senior supervisor has left the employer or has left Afghanistan; and

(iv) has experienced or is experiencing an ongoing serious threat as a consequence of the alien's employment described in clause (ii).

¹ Probably should include a close parenthesis before the semicolon.

(B) SPOUSE OR CHILD.—An alien is described in this subparagraph if the alien—

- (i) is the spouse or child of a principal alien described in subparagraph (A); and
- (ii) is accompanying or following to join the principal alien in the United States.

(C) SURVIVING SPOUSE OR CHILD.—An alien is described in this subparagraph if the alien—

- (i) was the spouse or child of a principal alien described in subparagraph (A) who had a petition for classification approved pursuant to this section or section 1059 of the National Defense Authorization Act for Fiscal Year 2006 (Public Law 109–163; 8 U.S.C. 1101 note) which included the alien as an accompanying spouse or child; and

(ii) due to the death of the principal alien—

- (I) such petition was revoked or terminated (or otherwise rendered null); and

(II) such petition would have been approved if the principal alien had survived.

(D) APPROVAL BY CHIEF OF MISSION REQUIRED.—

- (i) IN GENERAL.—Except as provided under clause (ii), a recommendation or evaluation required under subparagraph (A)(iii) shall be accompanied by approval from the appropriate Chief of Mission, or the designee of the appropriate Chief of Mission, who shall conduct a risk assessment of the alien and an independent review of records maintained by the United States Government or hiring organization or entity to confirm employment and faithful and valuable service to the United States Government prior to approval of a petition under this section.

(ii) REVIEW PROCESS FOR DENIAL BY CHIEF OF MISSION.—

- (I) IN GENERAL.—An applicant who has been denied Chief of Mission approval shall—

(aa) receive a written decision that provides, to the maximum extent feasible, information describing the basis for the denial, including the facts and inferences underlying the individual determination; and

(bb) be provided not more than one written appeal—

(AA) that shall be submitted not more than 120 days after the date that the applicant receives such decision in writing; and

(BB) that may request reopening of such decision and provide additional information, clarify existing information, or explain any unfavorable information.

(II) AFGHAN SPECIAL IMMIGRANT VISA COORDINATOR.—The Secretary of State shall designate, in the Embassy of the United States in Kabul, Af-

ghanistan, an Afghan Special Immigrant Visa Coordinator responsible for overseeing the efficiency and integrity of the processing of special immigrant visas under this section, who shall be given—

(aa) sufficiently high security clearance to review information supporting Chief of Mission denials if an appeal of a denial is filed;

(bb) responsibility for ensuring that an applicant described in subclause (I) receives the information described in subclause (I)(aa); and

(cc) responsibility for ensuring that every applicant is provided a reasonable opportunity to provide additional information, clarify existing information, or explain any unfavorable information pursuant to clause² (I)(bb).

(E) EVIDENCE OF SERIOUS THREAT.—A credible sworn statement depicting dangerous country conditions, together with official evidence of such country conditions from the United States Government, should be considered as a factor in determination of whether the alien has experienced or is experiencing an ongoing serious threat as a consequence of the alien's employment by the United States Government for purposes of subparagraph (A)(iv).

(F) REPRESENTATION.—An alien applying for admission to the United States pursuant to this title may be represented during the application process, including at relevant interviews and examinations, by an attorney or other accredited representative. Such representation shall not be at the expense of the United States Government.

(3) NUMERICAL LIMITATIONS.—

(A) IN GENERAL.—Except as provided in subparagraph (C), the total number of principal aliens who may be provided special immigrant status under this section may not exceed 1,500 per year for each of the fiscal years 2009, 2010, 2011, 2012, and 2013.

(B) EXCLUSION FROM NUMERICAL LIMITATIONS.—Aliens provided special immigrant status under this subsection shall not be counted against any numerical limitation under sections 201(d), 202(a), or 203(b)(4) of the Immigration and Nationality Act (8 U.S.C. 1151(d), 1152(a), and 1153(b)(4)).

(C) CARRY FORWARD.—

(i) FISCAL YEARS 2009 THROUGH 2013.—If the numerical limitation specified in subparagraph (A) is not reached during a given fiscal year, with respect to fiscal year 2009, 2010, 2011, 2012, or 2013, the numerical limitation specified in such subparagraph for the following fiscal year shall be increased by a number equal to the difference between—

² Probably should read "subclause".

(I) the numerical limitation specified in subparagraph (A) for the given fiscal year; and

(II) the number of principal aliens provided special immigrant status under this section during the given fiscal year.

(ii) FISCAL YEAR 2014.—If the numerical limitation determined under clause (i) is not reached in fiscal year 2013, the total number of principal aliens who may be provided special immigrant status under this subsection for fiscal year 2014 shall be equal to the difference between—

(I) the numerical limitation determined under clause (i) for fiscal year 2013; and

(II) the number of principal aliens provided such status under this section during fiscal year 2013.

(D) ADDITIONAL FISCAL YEAR.—For fiscal year 2014, the total number of principal aliens who may be provided special immigrant status under this section may not exceed 3,000, except that any unused balance of the total number of principal aliens who may be provided special immigrant status in fiscal year 2014 may be carried forward and provided through the end of fiscal year 2015, notwithstanding the provisions of paragraph (C), except that the one year period during which an alien must have been employed in accordance with subsection (b)(2)(A)(ii) shall be the period from October 7, 2001 through December 31, 2014, and except that the principal alien seeking special immigrant status under this subparagraph shall apply to the Chief of Mission in accordance with subsection (b)(2)(D) no later than September 30, 2014.

(E) SPECIAL RULE FOR END OF CALENDAR YEAR 2014.—

(i) IN GENERAL.—During the period beginning on the date of the enactment of this subparagraph and ending on December 31, 2014, an additional 1,000 principal aliens may be provided special immigrant status under this section. For purposes of status provided under this subparagraph—

(I) the period during which an alien must have been employed in accordance with paragraph (2)(A)(ii) must terminate on or before December 31, 2014;

(II) the principal alien seeking special immigrant status under this subparagraph shall apply to the Chief of Mission in accordance with paragraph (2)(D) not later than December 31, 2014; and

(III) the authority to provide such status shall terminate on December 31, 2014.

(ii) CONSTRUCTION.—Clause (i) shall not be construed to affect the authority, numerical limitations, or terms for provision of status, under subparagraph (D).

(F)⁵ FISCAL YEARS 2015 THROUGH 2021.—In addition to any unused balance under subparagraph (D), for the period beginning on the date of the enactment of this subparagraph until such time that available special immigrant visas under subparagraphs (D) and (E) and this subparagraph are exhausted,,³ the total number of principal aliens who may be provided special immigrant status under this section shall not exceed 26,500. For purposes of status provided under this subparagraph—

(i) the period during which an alien must have been employed in accordance with paragraph (2)(A)(ii) must terminate on or before December 31, 2022⁴

(ii) the principal alien seeking special immigrant status under this subparagraph shall apply to the Chief of Mission in accordance with paragraph (2)(D) not later than December 31, 2022 and

(iii) the authority to issue visas shall commence on the date of the enactment of this subparagraph and shall terminate on the date such visas are exhausted.

(4) APPLICATION PROCESS.—

(A) IN GENERAL.—Not later than 120 days after the date of the enactment of the National Defense Authorization Act for Fiscal Year 2014, the Secretary of State and the Secretary of Homeland Security, in consultation with the Secretary of Defense, shall improve the efficiency by which applications for special immigrant visas under paragraph (1), are processed so that all steps under the control of the respective departments incidental to the issuance of such visas, including required screenings and background checks, should be completed not later than 9 months after the date on which an eligible alien submits all required materials to complete an application for such visa.

(B) CONSTRUCTION.—Nothing in this section shall be construed to limit the ability of a Secretary referred to in subparagraph (A) to take longer than 9 months to complete those steps incidental to the issuance of such visas in high-risk cases for which satisfaction of national security concerns requires additional time.

(C) PROHIBITION ON FEES.—The Secretary of Homeland Security or the Secretary of State may not charge an alien described in subparagraph (A), (B), or (C) of paragraph (2) any fee in connection with an application for, or issuance of, a special immigrant visa under this section.

(5) ASSISTANCE WITH PASSPORT ISSUANCE.—The Secretary of State shall make a reasonable effort to ensure that an alien described in subparagraph (A), (B), or (C) of paragraph (2) who is issued a special immigrant visa pursuant to this subsection is provided with the appropriate series Afghan passport necessary to enter the United States.

(6) PROTECTION OF ALIENS.—The Secretary of State, in consultation with the heads of other appropriate Federal agencies,

³Two commas are so in law.

⁴Probably should include a semicolon at the end of clauses (i) and (ii) of subparagraph (F).

⁵The amendments made by section 1212(a) of Public Law 116-283 could not be executed as

shall make a reasonable effort to provide an alien described in subparagraph (A), (B), or (C) of paragraph (2) who is seeking special immigrant status under this subsection protection or to immediately remove such alien from Afghanistan, if possible, if the Secretary determines, after consultation, that such alien is in imminent danger.

(7) OTHER ELIGIBILITY FOR IMMIGRANT STATUS.—No alien shall be denied the opportunity to apply for admission under this subsection solely because such alien qualifies as an immediate relative or is eligible for any other immigrant classification.

(8) RESETTLEMENT SUPPORT.—A citizen or national of Afghanistan who is granted special immigrant status described in section 101(a)(27) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(27)) shall be eligible for resettlement assistance, entitlement programs, and other benefits available to refugees admitted under section 207 of such Act (8 U.S.C. 1157) to the same extent, and for the same periods of time, as such refugees.

(9) ADJUSTMENT OF STATUS.—Notwithstanding paragraph (2), (7), or (8) of subsection (c) of section 245 of the Immigration and Nationality Act (8 U.S.C. 1255), the Secretary of Homeland Security may adjust the status of an alien described in subparagraph (A), (B), or (C) of paragraph (2) of this subsection or in section 1244(b) of the Refugee Crisis in Iraq Act of 2007 (Public Law 110–181; 122 Stat. 397) to that of an alien lawfully admitted for permanent residence under subsection (a) of such section 245 if the alien—

(A) was paroled or admitted as a nonimmigrant into the United States; and

(B) is otherwise eligible for special immigrant status under—

(i) (I) this subsection; or

(II) such section 1244(b); and

(ii) the Immigration and Nationality Act (8 U.S.C. 1101 et seq.).

(10) ANNUAL REPORT ON USE OF SPECIAL IMMIGRANT STATUS.—

(A) REQUIREMENT.—Not later than 120 days after the date of the enactment of this Act, and annually thereafter, the Secretary of Homeland Security shall submit to the appropriate committees of Congress a report on the number of citizens or nationals of Afghanistan or Iraq who have applied for status as special immigrants under this subsection or section 1244 of the Refugee Crisis in Iraq Act of 2007 (Public Law 110–181; 122 Stat. 396).

(B) CONTENT.—Each report required by subparagraph (A) submitted in a fiscal year shall include the following information for the previous fiscal year:

(i) The number of citizens or nationals of Afghanistan or Iraq who submitted an application for status as a special immigrant pursuant to this section or section 1244 of the Refugee Crisis in Iraq Act of 2007 (Public Law 110–181; 122 Stat. 396), disaggregated—

(I) by the number of principal aliens applying for such status; and

(II) by the number of spouses and children of principal aliens applying for such status.

(ii) The number of applications referred to in clause (i) that—

(I) were approved; or

(II) were denied, including a description of the basis for each denial.

(11) REPORT ON IMPROVEMENTS.—

(A) REQUIREMENT FOR REPORT.—Not later than 120 days after the date of the enactment of the John S. McCain National Defense Authorization Act for Fiscal Year 2019, the Secretary of State and the Secretary of Homeland Security, in consultation with the Secretary of Defense, shall submit to the appropriate committees of Congress a report, with a classified annex, if necessary.

(B) CONTENTS.—The report required by subparagraph (A) shall describe the implementation of improvements to the processing of applications for special immigrant visas under this subsection, including information relating to—

(i) enhancing existing systems for conducting background and security checks of persons applying for special immigrant status, which shall—

(I) support immigration security; and

(II) provide for the orderly processing of such applications without significant delay;

(ii) the financial, security, and personnel considerations and resources necessary to carry out this section;

(iii) the number of aliens who have applied for special immigrant visas under this subsection during each month of the preceding fiscal year;

(iv) the reasons for the failure to process any applications that have been pending for longer than 9 months;

(v) the total number of applications that are pending due to the failure—

(I) to receive approval from the Chief of Mission;

(II) of U.S. Citizenship and Immigration Services to complete the adjudication of the Form I-360;

(III) to conduct a visa interview; or

(IV) to issue the visa to an eligible alien;

(vi) the average wait times for an applicant at each of the stages described in clause (v);

(vii) the number of denials or rejections at each of the stages described in clause (v); and

(viii) the reasons for denials by the Chief of Mission based on the categories already made available to denied special immigrant visa applicants in the denial letter sent to them by the Chief of Mission.

(12) PUBLIC QUARTERLY REPORTS.—Not later than 120 days after the date of the enactment of the National Defense Authorization Act for Fiscal Year 2014, and every 3 months thereafter, the Secretary of State and the Secretary of Homeland Security, in consultation with the Secretary of Defense, shall publish a report on the website of the Department of State that describes the efficiency improvements made in the process by which applications for special immigrant visas under this subsection are processed, including information described in clauses (iii) through (viii) of paragraph (11)(B).

(13) REPORT.—Not later than December 31, 2016, and annually thereafter through January 31, 2023, the Secretary of State and the Secretary of Homeland Security, in consultation with the Secretary of Defense, shall submit a report to the appropriate committees of Congress containing the following information:

(A) The occupations of aliens who—

(i) were provided special immigrant status under subclause (I) or (II)(bb) of paragraph (2)(A)(ii); and

(ii) were considered principal aliens for such purpose.

(B) The number of appeals submitted under paragraph (2)(D)(ii)(I)(bb) from application denials by the Chief of Mission and the number of those applications that were approved pursuant to the appeal.

(C) The number of applications denied by the Chief of Mission on the basis of derogatory information that were appealed and the number of those applications that were approved pursuant to the appeal.

(D) The number of applications denied by the Chief of Mission on the basis that the applicant did not establish faithful and valuable service to the United States Government that were appealed and the number of those applications that were approved pursuant to the appeal.

(E) The number of applications denied by the Chief of Mission for failure to establish the one-year period of employment required that were appealed and the number of those applications that were approved pursuant to the appeal.

(F) The number of applications denied by the Chief of Mission for failure to establish employment by or on behalf of the United States Government that were appealed and the number of those applications that were approved pursuant to the appeal.

(G) The number of special immigrant status approvals revoked by the Chief of Mission and the reason for each revocation.

(H) The number of special immigrant status approvals revoked by the Chief of Mission that were appealed and the number of those revocations that were overturned pursuant to the appeal.

(14) REPORTS INFORMING THE CONCLUSION OF THE AFGHAN SPECIAL IMMIGRANT VISA PROGRAM.—Not later than June 1, 2016, and every six months thereafter, the Secretary of De-

fense, in conjunction with the Secretary of State, shall submit to the Committee on Armed Services and the Committee on the Judiciary of the Senate and the Committee on Armed Services and the Committee on the Judiciary of the House of Representatives a report that contains—

(A) a description of the United States force presence in Afghanistan during the previous 6 months;

(B) a description of the projected United States force presence in Afghanistan;

(C) the number of citizens or nationals of Afghanistan who were employed by or on behalf of the entities described in paragraph (2)(A)(ii) during the previous 6 months; and

(D) the projected number of such citizens or nationals who will be employed by or on behalf of such entities.

(15) SENSE OF CONGRESS.—It is the sense of Congress that the necessity of providing special immigrant status under this subsection should be assessed at regular intervals by the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives, taking into account the scope of the current and planned presence of United States troops in Afghanistan, the current and prospective numbers of citizens and nationals of Afghanistan employed by or on behalf of the entities described in paragraph (2)(A)(ii), and the security climate in Afghanistan.

(c) RULE OF CONSTRUCTION.—Nothing in this section may be construed to affect the authority of the Secretary of Homeland Security under section 1059 of the National Defense Authorization Act for Fiscal Year 2006 (Public Law 109–163; 8 U.S.C. 1101 note).

This division may be cited as the “Departments of Labor, Health and Human Services, and Education, and Related Agencies Appropriations Act, 2009”.